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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,821	11/24/2003	Douglas B. Wilson	114089.120	5355
23483	7590	06/23/2004	EXAMINER	
WILMER CUTLER PICKERING HALE AND DORR LLP			LUONG, VINH	
60 STATE STREET			ART UNIT	
BOSTON, MA 02109			PAPER NUMBER	

3682

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/720,821

Applicant(s)

WILSON, DOUGLAS B.

Examiner

Vinh T Luong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

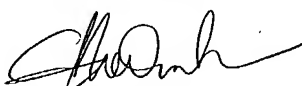
### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
Vinh T. Luong  
Primary Examiner

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. The formal drawings were received on March 15, 2004. These drawings are not approved by the Examiner due to the objection below.
2. The drawings are objected to because the drawings should show the plane upon which a sectional view, e.g., Fig. 3 is taken. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
3. The disclosure is objected to because of the following informalities: the brief description of the drawings should describe the plane upon which a sectional view, e.g., Fig. 3 is taken. Appropriate correction is required.
4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Raudebaugh (US Patent No. 3,884,092).

Regarding claim 1, Raudebaugh teaches a fatigue relieving/preventing apparatus associated with vehicular control means 18, 18', 18'' comprising:

a first section 17a, 21, 22, 30, etc. that connects to a predetermined portion of the vehicular control means 18, 18', 18''; and

a deformable section 15, 19, 25, 28, 32, etc. that connects to the first section 17a, 21, 22, 30, etc. that is capable of supporting at least a portion of a vehicular operator's body (i.e., an arm).

Claim 1 and other claims below are anticipated by Raudebaugh because Raudebaugh teaches each and every positive claimed element. It has long been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 U.S.P.Q. 138 (CCPA 1946).

Regarding claim 2, the deformable second section 15, 19, 25, 28, 32, etc. is deformable in at least one direction when deforming pressure is applied to such deformable second section 15, 19, 25, 28, 32, etc.

Regarding claim 3, the deformable second section 15, 19, 25, 28, 32, etc. supports a portion of the vehicular operator's body when pressure from such body portion is applied in at least one direction.

Regarding claim 4, the vehicular control means 18, 18', 18'' is capable of controlling at

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least a nautical vessel, aircraft, or ground transportation vehicle.

Regarding claim 5, the deformable second section 15, 19, 25, 28, 32, etc. will return to an original first position after deforming pressure is removed therefrom because it is made of elastic material, such as, foam rubber. See, e.g., column 1, line 62 *et seq.*

Regarding claim 6, the portion of the body supported by the deformable second section 15, 19, 25, 28, 32, etc. includes at least a forearm, wrist, or hand.

Regarding claim 7, the first section 17a, 21, 22, 30, etc. extends a length of a predetermined portion of the vehicular control means 18, 18', 18''.

Regarding claim 8, the deformable second section 28, 32 includes at least two deformable second sections 28, 32 that each connect to the first section 30 (Figs. 8-11). *Ibid.*, col. 3, lines 12-38 and claims 1-4.

Regarding claim 9, the first section 17a, 21, 22, 30, etc. is deformable. Note that virtually anything will be deformed if enough pressure is applied to it. See the term "flexible" in *Fredman v. Harris-Hub Co., Inc.*, 163 U.S.P.Q. 397 (DC 1969).

Regarding claim 10, Raudebaugh teaches a fatigue relieving/preventing apparatus associated with a vehicular control means 18, 18', 18'', comprising:

at least two discrete first sections 30 that each connect to a predetermined portion of the vehicular control means 18, 18', 18'', and

a discrete deformable second section 28, 32 that connects to each first section 30.

Regarding claim 11, each deformable second section 28, 32 is deformable in at least one direction when deforming pressure is applied to each discrete such deformable second section 28, 32.

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Regarding claim 12, each deformable second section 28, 32 supports a portion of the vehicular operator's body when pressure from such body portion is applied to it in at least one direction.

Regarding claim 13 the vehicular control means is capable of controlling at least a nautical vessel, aircraft, or ground transportation vehicle.

Regarding claim 14, each deformable second section 28, 32 will return to an original first position after deforming pressure is removed therefrom.

Regarding claim 15, the portion of the body supported by the deformable second section 28, 32 includes at least a forearm, wrist, or hand.

Regarding claim 16, the apparatus is adjustable for supporting different sizes or types of body portions (by, *e.g.*, adjusting the locations of the fastener means 30).

Regarding claim 17, each first section 17a, 21, 22, 30, etc. is capable of being formed integral with the vehicular control means 18, 18', 18''.

Regarding claim 18, each first section 17a, 21, 22, 30, etc. is capable of being detached from the vehicular control means 18, 18', 18''.

Regarding claim 19, each first section 17a, 21, 22, 30, etc. is deformable. *Fredman v. Harris-Hub Co., Inc., supra.*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Haraji (second section 3), Hull et al.'543 (Fig. 4), Ruimi (Fig. 4A-5), Kertz (Figs. 1-4), Hull et al.'599 (Fig. 1), and Lin (second section 22 in Fig. 7).

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 703-308-3221. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci can be reached on 703-308-3668. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Luong

June 15, 2004



Vinh T. Luong  
Primary Examiner